

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 14923 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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DWODBHAI ABHRAMBHAI GANJA - Petitioner(s)
Versus
PRAVINBHAI DAHYABHAI PATEL & 2 - Respondent(s)

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Appearance :

MR CH VORA for Petitioner(s) : 1,
 MR MB GANDHI for Respondent(s) : 1 - 3.
 MR CHINMAY M GANDHI for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 21/11/2006

ORAL JUDGMENT

By filing this petition under Article 227 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ or

order or direction quashing and setting aside the judgment and order dated 23rd June, 2005 passed by learned Additional District Judge, Vadodara in Miscellaneous Civil Appeal No.68 of 1996 and to restore the judgment and order dated 9th February, 1996 passed by learned Civil Judge (J.D.), Karjan below Exh.5 in Regular Civil Suit No.45 of 1995.

2. The petitioner - original plaintiff filed Regular Civil Suit No.45 of 1995 in the Court of Civil Judge (J.D.), Karjan for permanent injunction and took out an injunction application (Exh.5) for temporary injunction till final disposal of the suit. The learned Trial Judge granted ad-interim relief as prayed for by the petitioner - plaintiff. The respondents resisted the injunction application by filing a reply. After hearing the learned advocate for the parties, the learned Civil Judge (J.D.), Karjan, by his order dated 9th February, 1996, allowed the injunction application and granted the injunction, as prayed in the injunction application, till final disposal of the suit. Being aggrieved by the said decision, the respondents herein preferred Miscellaneous Civil Appeal No.68 of 1996 before the District Judge at Baroda. After hearing the learned advocate for the parties, the learned Additional District Judge, Vadodara, by his order dated 23rd June, 2005, allowed the appeal and set aside the order of injunction passed by learned Civil Judge (J.D.), Karjan below injunction application (Exh.5) in Regular Civil Suit No.45 of 1995. The petitioner

- plaintiff has preferred these proceedings, being aggrieved by the said decision.

3. I have heard learned advocate Mr. Vora for the petitioner and learned advocate Mr. Gandhi for the respondents at length and in great detail.

4. The main contention of the petitioner is that the learned Trial Judge was justified in reaching the conclusion that the petitioner - plaintiff is not likely to suffer any irreparable loss and, therefore, the balance of convenience is in his favour. He has also submitted that the 1st Appellate Court committed an error in considering the documents produced before the Trial Court and, therefore, the order is required to be set aside.

5. Learned advocate Mr. Gandhi for the respondents submitted that the learned 1st Appellate Court, after considering the evidence on record, has found that the Trial Court committed an error in reaching to the conclusion that, *prima facie*, the balance of convenience is in favour of the plaintiff and, therefore, the conclusion reached by it was against the settled principle of law. Therefore, the order passed by the 1st Appellate Court does not require any interference and this court cannot go into the question of facts involved in the matter and, therefore, the petition is required to be dismissed.

6. It is settled proposition of law that while exercising the jurisdiction under Article 227 of the Constitution, the High Court does not act as an Appellate Court or Tribunal and, therefore, it will not review/reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based. In this case, the 1st Appellate Court found that the suit property belonged to the petitioner and there was an agreement to keep open a road of 10 feet in width. The learned Judge also considered the documents produced before the Trial Court. It also appears from the observations that the learned Judge considered the documents and found that the right of way in respect of the suit property has been acknowledged. In view of these observations and in light of the settled proposition of law, it cannot be said that there is no evidence to support the findings recorded by the 1st Appellate Court or that the findings are perverse. In view of the above, the petition fails and stands dismissed with no order as to costs. Rule discharged. Interim relief granted earlier stands vacated.

7. It is made clear that the learned Trial Judge, while deciding the suit, will decide it on its own merits and shall not be influenced by the observations made in this order. It is expected hat the suit being very old, the Trial Court shall give priority to the hearing of the suit.

(Bankim N. Mehta, J.)

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